

## TOWN OF MARION RULES & REGULATIONS FOR AQUACULTURE LICENSES

### Eligibility Requirements

Eligibility shall be at the sole determination of the Select Board of the Town of Marion. The Marine Resource Commission shall interview the applicant and, based on a majority vote of the MRC, make a recommendation to the Select Board. The Select Board reserves the right to interview the applicant before making a determination on the application.

The Select Board and the MRC shall consider the following when making their decision:

1. Licenses shall only be issued to persons domiciled in the Towns of Marion or Rochester and be 18 years of age or older. They must have the knowledge and experience to fulfill the responsibilities specified in the license.
2. The applicant:
  - a. Must have held a Marion commercial shellfishing permit during at least three (3) of the four (4) calendar years preceding the date of application, or
  - b. Must provide documented evidence of education or experience in shellfish propagation and aquaculture that is acceptable to the Select Board.
3. The applicant shall not have any violations of Marion Shellfishing Policy and Regulations within the last three (3) years, or similar violation in any other jurisdiction.

### Applications

1. Applicants are required to complete and submit the Town's approved application form to the Town Clerk. A non-refundable application fee of \$100.00 (One hundred dollars) payable to the Town of Marion shall be submitted at that time. Copies of the application will be forwarded to the Marine Resources Commission, the Shellfish Officer, Harbormaster and the Conservation Commission for comment.
2. The applicant shall also submit
  - a. Copies of state-filed catch reports
  - b. Documented experience in shellfish propagation and aquaculture continuously over at least three (3) years preceding the date of application, or if the applicant demonstrates experience in shellfish propagation and aquaculture preceding the date of application, and provides the documentation of such experience to the Shellfish Officer. This documentation shall be for a period of time sufficient to convince the Select Board and MRC that the application has the prerequisite experience. Documentation of experience shall include a letter from a license holder who employed the applicant, describing the type of work performed and any other information which might be relevant, or
  - c. The applicant may provide documentation such as a certificate of education from an accredited educational institution, and
  - d. A detailed five-year business plan for use of the grant; to include shellfish species, amounts and sizes of gear to be used, access routes, and any other information relevant to proposed operations.
3. Applications shall not exceed 3 acres and shall be confined to one area, allowing one-half acre (22,000 square feet) for first year.

- a. The site must be mutually beneficial to the Town of Marion and the license holder. The license holder may be allowed additional area upon review from the Harbormaster/Shellfish department in subsequent years.
- b. Productive areas of Town flats and waters are exempt from consideration
- c. Approved licensed areas at the time these regulations are enacted by the Select Board (11/2/2021) will be exempt from the requirement that their licensed area is confined to one location.
- d. Aquaculture license applications will be considered for approval on a first-come first-serve basis within the limitations of acceptable and available water space

#### Approval

1. Only the Select Board is authorized to issue and Aquaculture license to an individual, group of individuals, or private company, to rear marine organisms under controlled conditions. They may issue a moratorium on the issuance of new aquaculture licenses at any time they deem it appropriate and in the best interest of the Town.
2. The Select Board must decide to proceed or deny the application within sixty (60) days of receipt. Applications receiving favorable review by the Select Board shall require a public hearing. At that time, the applicant will be required to notify all abutters of the proposed license area of the date, time, and place of the hearing. Public hearings may also be deemed necessary and held separately by the Conservation Commission and the U. S. Army Corps of Engineers.
3. Licenses will be issued for a period of three years. No individual, group of individuals, or private company may hold more than one license. Aquaculture licenses are issued for the exclusive use of the licensee who may contract or employ others to work the license site. Licensee is required to submit a list of all persons, employees, or contracted persons to the Select Board and Shellfish Officer.
4. Subleasing of the site or portion thereof is prohibited.
5. Licenses may be transferred only with written approval from the Select Board and cannot be sold.
6. Approval of any aquaculture license will be subject to all federal, state, and local laws, rules, and regulations. The prospective licensee will comply with all rules and regulations as set forth in Massachusetts General Laws Chapter 130, particularly Section 57, and Chapter 131, Section 40. Failure to comply with the aforementioned laws, rules, and regulations will be deemed cause to revoke the license.

#### Aquaculture License Requirements

1. A license holder is authorized to use a specific portion of coastal waters of the Commonwealth, of tidal flats or land under coastal water to: Plant or grow shellfish, bottom/off-bottom culture place shellfish in or under protective devices affixed to the tidal flats or under coastal waters, within boxes, pens, or nets harvest and take legal shellfish, plant cultch for the purposes of catching shellfish seed, grow shellfish by means of racks, rafts or floats.
2. No license holder shall plant, place, or transplant shellfish in or on any water or flat within the Town without first obtaining the approval of the Shellfish Officer and, as needed, the Division of Marine Fisheries.

3. No license holder shall remove seed stock from the natural fisheries within the Town, for any purpose, including the stocking of licensed aquaculture sites without the written approval of the Shellfish Officer and the Division of Marine Fisheries.
4. License site boundaries must be marked on all corners by uniform stakes or buoys. These stakes or buoys shall bear the number of the license, said numbers shall be at least two (2) inches in height and kept legible. The license holder shall obtain written confirmation from the Shellfish Officer that the license area is properly marked.
5. All subsequent changes to the plan of the original application and all additions of material investments (floats, barges, racks, trays, etc.) must be approved by the Shellfish Officer, Harbormaster, and the Select Board.
6. The annual license fee of \$12.50 (twelve dollars and fifty cents) per one-half acre will be paid to the Town at the time the license is issued. An annual mooring permit will be assessed for the sum of \$400.00 (four hundred) per ½ acre site. Renewals will be due on or before 31 December of each year. If the fees are not paid within thirty (30) days of the due date, the aquaculture license shall be forfeited. No license may be issued if the applicant owes taxes, has outstanding and/or unpaid fines, or has other overdue financial obligations to the Town of Marion.
7. An annual review of each license will be conducted to determine reasonable production value or potential. If the licensee cannot show that a reasonable amount of product, as determined by the Shellfish Officer, has been produced on the site during the preceding year, the license may be forfeited. Consideration will be given for extenuating circumstances (i.e., hurricanes, disease, etc.)
8. A written annual progress report summarizing data on abundance, growth rates, and mortalities for each species present on the license site shall be submitted to the Shellfish Officer and the Select Board within sixty (60) days of the end of the year. License renewal shall be conditional on the annual catch (shellfish production) reports being submitted in a timely fashion.
9. Upon request of the Shellfish Officer, the license holder is required to produce documents showing purchase and sales slips stating the total amount of each species planted, produced, or marketed during the preceding year.
10. Any Shellfish being sold must meet all applicable regulations set forth by local, state and federal laws.

#### Liability

1. The license holder is required to maintain business liability insurance and a performance bond sufficient to cover the costs of gear removal and site restoration in the amount of twelve thousand five hundred dollars (\$12,500). The insurance and surety bond shall be fully executed with an effective term identical to the period of the aquaculture license. Documented evidence of the required insurance and surety bond shall be on file with the Town Clerk and shall be a requirement for obtaining final approval by the Select Board.
2. The license holder is required to maintain workers compensation insurance for all employees, or contracted persons that work in the licensed area. License holders shall be held responsible for any and all actions taken by any persons, employees, or contracted persons working in the licensed area.

3. All tackle, gear and product on site is considered property and liability of the license holder. The licensee will assume all responsibility for personal injury and/or property damage as a direct result of operations. All mooring systems used to hold rafts, holding "cars", and/or other equipment are subject to Town Harbor Regulations, and must be approved by the Harbormaster. If gear, tackle or other equipment leaves the licensed area for any reason and is deposited on the shore, beaches or flats, whether public or private, the license holder must recover the equipment within 72 hours from the time of its deposit. Failing this, the gear will be removed by the Shellfish Officer and/or deputies at the expense of the license holder at a rate of \$25.00 (twenty-five dollars) per hour per man plus expenses. Nothing will restrict the Harbormaster from taking more immediate action, with or without notifying the license holder if, in his judgement, such action is necessary for personal safety or the prevention of property damage.
4. The license holder shall not hold the Town of Marion liable for any damage or injury to the licensed area due to any dredging or improvements done in the best interest of the Town. Further, the Town of Marion shall not be held liable for loss or damage due to man-made or natural disasters.

#### Aquaculture License Termination

1. At such time as a licensee ceases to be a domiciled resident of the Towns of Marion or Rochester that individual shall be removed from the license. The status of all other licensees will not change. If that licensee is the sole license holder then the license shall be revoked.
2. When a license is discontinued or terminated for any reason, all gear and tackle will be removed from the waters and substrate within sixty (60) days. Failing this, the gear will be removed by the Shellfish Officer and/or deputies at the expense of the license holder at a rate of \$25.00 (twenty-five dollars) per hour per man plus expenses.
3. When an aquaculture license is discontinued or terminated the Shellfish Officer shall determine when the site is suitable to be transferred. At such time the site status shall be posted by the Shellfish Officer for a period of 30 calendar days. If more than one qualified person applies to hold the license, the Select Board, as well as the Marine Resources Commission, may choose to hold interviews to impartially determine who shall be granted the right to use that available acreage for aquaculture.
4. Violation of these Rules and Regulations subjects the license holder to review and possible revocation of the license at the discretion of the Select Board.

#### Inspection

The Shellfish Officer and/or deputies shall have the authority to inspect the licensed area at any time and said inspection may include any and all containers on site. The Town of Marion reserves the right at any time to obtain samples of any species held in the licensed area for the purpose of certified testing for disease.

#### Severability

If any provisions of these Rules and Regulations are declared invalid by any court or tribunal of competent jurisdiction, the remaining provisions of these Rules and Regulations shall not be affected thereby.

**Definitions:**

**Abutter**- Any abutters within 100 feet of the projected site on: Land under water bodies or waterways.

**Annual Report** - A report that must be submitted to the Shellfish Officer which includes the total number of each kind of shellfish planted, produced or marketed during the preceding year upon or from a licensed aquaculture area, and an estimate of the total number of each kind of shellfish at the time of such report, planted or growing thereon (MGL Chapter 130; Section 65).

**Aquaculture** - The farming of aquatic marine organism including, but not limited to fish, mollusks, crustaceans, echinoderms and plants. Farming implies some sort of intervention in the rearing process to enhance production including, but not limited to controlled propagation, feeding and protection from predators.

**Aquaculture License or License**- An authorization, granted by a vote of the Select Board, to utilize a specific tract of land, under coastal waters (1) to plant and grow shellfish using in-bottom or off- bottom culture; (2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under Marion's coastal waters, such as boxes, pens, trays, bags or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats (MGL Chapter 130; Section 57-68).

**Shellfish Officer** - The municipal employee, appointed by the Select Board, who is in charge of administering the management of the fishery; the head of the Shellfish Department of the Town.

**Domiciled** - A declared resident of the Town of Marion or Rochester. Written proof that Marion or Rochester is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Shellfish Officer and Select Board. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or passport.

**Licensed Area (Grant)** - a designated bottom area, certified by The Department of Marine Fisheries (DMF) and licensed by a vote of the Select Board, on which the licensee may plant, grow and harvest shellfish (MGL Chapter 130; Sections 57 & 68).

**License Holder** - A person or persons, or a firm or corporation holding a license issued by the Select Board under the provisions of MGL Chapter 130.

**Licensee** - See License Holder

**Permit** - A certificate granting permission to engage in specific activities issued by the appropriate authority.

**Select Board** - The Select Board; Marion's elected executive Board, designated by the State (MGL Chapter 30) as the regulatory Board that has jurisdiction over shellfishing in the Town.

**Shellfish** - Softshell clams, whelks, mussels, oysters, snails, quahogs, razor clams (razor fish), bay scallops, sea scallops, sea clams, and blood arks.

**Surety bond** - Is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety) guarantees the performance or obligations of a second party (the principal) to a third party (the obligee).

**Town** - The Town of Marion.

**Transfer** - To grant the right to use a previously established, licensed area, as allowed by MGL Chapter 130: Sections 57 and 58, and approved by a vote of the Select Board.

**Waters** - Coastal waters, tidal flats, tidal creeks, and all salt or fresh waters within the boundaries of the Town of Marion.